Collection No.

1932.

P 30

Mysore Residency

Bangalore.

Pros. Serial Nos. 1-6

S-N-4/a

12/2/43

Subject.

Question of the jurisdiction of the Court which should try the claim about guardianship in the case of minors Ali Mahamed and Mahmooda.

Previous References.	Later References.

S. 97.—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

NOTES AND PRECIS.

(K) S.N. 1

etter No.F.189/32-Judicial, dated the 27th February, 1932, from the Govt. of India in the Home Deptt.

Question of the jurisdiction of the Court which should try the ~~xxxx~~ claim about guardianship in the case of minors Ali Mahamed & Mahmooda.

The facts of the case are briefly as follows:- One Ismail Sait, a Cutchee Memon (Muslim) following the Hindu Law of succession and inheritance, died leaving behind, a son and daughter by his first wife (deceased) and another son and daughter by second wife, all minors, and his second wife. He left behind properties within the jurisdiction of the Courts in Bangalore City and the Civil and Military Station.

S.N. 1/c (K/1)

cf. para. 3 of ~~schedule in~~ S.N. 1/c.

By order dated the 5th March 1923 of the Court of the District Judge, C. and M. Station, the Official Receiver, C. and M. Station, was appointed guardian of the properties of both sets of minors and the widow, the guardina of the person of her two minor children. The widow with her two chidren lived in Tellicherry, while the minor son by the 1st wife lived in the C. and M. Station.

para 1 S.N. 1/c (K/1)

~~[illegible]~~

para 1 S.N. 1/c

S.N. 1/d (K/2)

The minor by the 1st wife attained majority during the administration of the estate by the Official Receiver and an arrangement for the apportionment of the properties, came to between himself and the Official Receiver, was sanctioned by the District Court, C. and M. Station, in its order dated the 9th July 1929.

para 1 S.N. 1/c (K/1)

In July 1930, the guardian of the person of the surviving minors applied to the District Court, C. and M. Station, to direct the guardian of property to file his accounts. The guardian (the Official Receiver) submitted the accounts and applied for his discharge. This was allowed by the Court by its order dated the 11th August 1930.

DC

It

Paras 7 & 8 GS.N.1/c

It is alleged that since the order of the Court dated the 9th July 1929 approving the apportionment of the estate, the maintenance of the minor was in arrears, and since the order dated the 11th August 1930 of discharge of the guardian of property no one was appointed in his place.

The step-brother of the minors who attained majority in 1929 applied to the District Court, C. and M. Station, to be appointed guardian of the properties of the ~~other~~ surviving two minors while the mother and guardian of the person of the minors, who was living with them at Tellicherry, applied to the District Court, North Malabar, to be appointed guardian of their property. When the District Judge, C. and M. Station, became aware of the proceedings in the latter Court, he stayed proceedings in his own Court and intimated the fact to the District Judge, North Malabar, for further action under section 14 of the Guardian and Wards Act, 1890. The section lays down that, when proceedings for the appointment of a guardian are taken in more Courts than one, the matter should be reported to the High Court to which they are subordinate, for a decision as to which Court should proceed with the case; in any other case, the matter should be reported to the Govt. of India who will decide as to which Court should exercise jurisdiction in the matter. The matter was accordingly reported to the Govt. of India. They have now asked for the views of the Resident in the matter after consultation with the District Judge, C. and M. Station. The views of the latter may be invited..

S.N.1/d

S.N.1

Draft put up.

V.V. nair 26/7/32

27/7/32

S.N.2

Issued No. 3604 dated the 28th May 1932

S.N.3 (K) Letter No.2651, dated the 13th June 1932, from the District Judge, C. and M. Station, Bangalore.

Please see notes from para 1.

(L) Section 4(5)(b)(i) of the Guardians and Wards Act, 1890, defines 'Court' as follows:-

> "The Court which, or the Court of the officer "who,appointed or declared the guardian or is under "this Act deemed to have appointed or declared the "guardian".

The District Judge, C. and M. Station is of opinion that, having regard to the above definition of the term 'Court' and the fact that the Station Court previously appointed guardians (both of person and of property) in this case, his Court has exclusive jurisdiction to entertain the application. This view may be concurred in and the Govt. of India informed accordingly.

S.N. 3/ P.U.C (A)

Draft put up.

V.V. Manar
20/6/32

(From para 1)

Secy.

Law Secy is not. to Govt. Dept. Ind. Home (I Cham.) Ind. Home to reply to Political Secy. Govt.

Para 12 ante :

The reference emanated from the Home Department.

The present question is-which Court, whether the Station District Court or the Sub-Court, Tellicherry, should exercise jurisdiction in a case arising under the Guardians and Wards Act, 1890, as in force in British India and in the Station. Under subsection (3) of section 14 of the Act (as in force in both places) the Courts should report the case through the Local Government to the Governor General in Council for decision. The Station District Court did not make any report; but the Tellicherry Sub-court reported through the Government of Madras to the Government of India in the Home Department. A report by the Station District Court through this administration would ordinarily have gone to the Foreign and Political Department. It does not appear that matters affecting jurisdiction of Courts in administered areas have been transferred to the Home Department. It will thus be seen that both Foreign and Political Department and Home Department are concerned in the matter. It is not therefore incorrect to reply to Home Department through Foreign and Political Department. But as Home Department will ~~no doubt~~ normally consult Foreign and Political Department before passing orders in this case, we may just as well reply to Home Department direct.

In this view the superscription in the draft has been amended. For orders as to the issue of the draft.

V.V. Marar
25/6/26

(From Para 12)

Thank you for draft. Shy. Issue your draft. Shy as at present.
28/6

It is regretted that the words were allowed to remain by an oversight.

It

It is however ascertained from the Coorg Office that communications to Home Deptt. are addressed to the Secretary to the Home Deptt. irrespective of the fact whether their letter proceeded from the Secretary or the Joint Secretary. Mr. Gwynne is the Joint Secretary. The communication may therefore be addressed to the Secretary to the Govt. of India, Home Deptt and the words "Mr. Gwynne's" (retained in the draft).

V.V. Iyer
28/6/32

Secy.

(Paras 1 to 11 only).

16

Draft may issue.

Resident.

S.N. 4

Issued No. 4607 Dated 12th July 32.

(13)

Endorsement No.F. 189/32-Judicial, dated the 7th December, 1932, from the Government of India, Home Department.

This is a case connected with the appointment of guardian of the property of two minors under the Guardians and Wards Act. The facts of the case are set forth fully in the notes in paragraphs 1 to 6 ante.

The point for consideration is as to which of the two Courts, the Sub-Court at Tellicherry, within whose jurisdiction the minors in question are at present residing, or the District Court, C & M. Station, Bangalore, within whose jurisdiction the property is situated and which ~~had,~~ on a previous occasion exercised jurisdiction in this case, is now entitled to exercise jurisdiction to entertain a subsequent application for appointment of guardian of the property of the minors. The Dist. Judge, C. & M.Station, who was consulted at the instance of the Government of India, held the view that the station District Court should exercise jurisdiction in the case, inasmuch as his Court had exercised it previously. The Resident agreed with this view. The Government of India, now hold that the Tellicherry Court should exercise jurisdiction in respect of the guardianship of the person of the minors and that the

Station

Station Court should exercise jurisdiction in respect of the guardianship of the property of the minors. A copy of the P.U.C. may be communicated to the District Judge for information and guidance.

Draft submitted.

V.V. Anavar.
17 XII/32

17.12 (from para 17)

A Resident
19/12

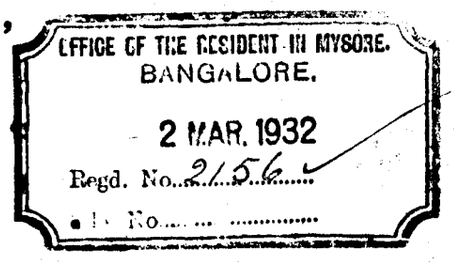
S.N.6 | Issued No. 8639 Dt. the 21st- XII-32.

CORRESPONDENCE.

No.F.189/32-Judicial.

Government of India,

Home Department.



From

C.W. Gwynne, Esquire, C.I.E., O.B.E., I.C.S.,

Joint Secretary to the Government of India,

To

The Hon'ble the Resident in Mysore.

New Delhi, the 27th February 1932.

Subject:- Question of the jurisdiction of the court which should try the claim about guardianship in the case of minors Ali Mahamed and Mahmooda.

Sir,

I am directed to forward a copy of a letter from the Government of Madras, No. 531 B-1, dated the 17th February 1932 and of its enclosures, regarding the institution of proceedings in the courts of the Subordinate Judge, Tellicherry, Madras, and the District and Sessions Judge, Civil and Military Station, Bangalore, for the appointment of a guardian of the properties of the two minors mentioned above. In order to determine, under section 14(3) of the Guardians and Wards Act, 1890(VIII of 1890), in which of the courts the proceedings shall be had, the Government of India would be glad to receive an expression of your views after consultation with the District and Sessions Judge, Civil and Military Station, Bangalore.

I have the honour to be,

Sir,

Your most obedient servant,

C.W. Gwynne

Joint Secretary to the Government of India.

Copy of a letter No. 531 B-1, dated the 17th February 1932, from the Government of Madras, to the Government of India, Home Department.

Guardian and Wards Act VIII of 1890- Reference under section 14 of the Act.

S.N. 1/b infra. I am directed to forward copy of letter No. 114/32, dated the 22nd January 1932 from the Subordinate Judge of Tellicherry with its enclosures on the subject referred to above and request to be informed in which of the courts the proceedings with respect to the appointment of the guardian of the minor shall be had.

Copy of a letter No. 114/32, dated the 22nd January 1932, from the Subordinate Judge of Tellicherry, to the Government of Madras.

Ref- Under section 14 of the Guardian and Wards Act VIII of 1890.

I have the honour to report the following case for the orders of Government.

2. One Rukia Bai, widow of Ismail Sait, now residing in Tellicherry Bazaar, Tellicherry town, has applied to this court in O.P. No.10/1931(O.P. No.41/1931, District Court, North Malabar) praying for an order that she may be appointed guardian of the properties of her minor son, Ali Mahomed aged 16 years and her minor daughter Mahmooda aged 14 years, under sections 7 and 10 of the said Act.

3. In the usual course, notice, proclamation and publication were ordered by the court on the petition and notice was given to the near relations of the petitioner mentioned in the petition who are residing in the State of Mysore.

4. During the progress of the hearing of the petition, the District and Sessions Judge, Civil and Military Station, Bangalore, addressed to me a letter No. 6, dated 2/1/32, stating that one Saleh Mahomed Ismail Sait residing at No.1, Central Street, Bangalore, has filed a petition under section 42 of the Act (O.P. 82/1931) in the Court of the District and Sessions Judge, Civil and Military Station, Bangalore, praying that he may be appointed guardian of the property of the said 2 minors Ali Mahomed and Mahmooda, that he has stayed further proceedings in his court temporarily and requesting me to take the necessary action under section 14 of the Act. He has also brought to my

notice

S.N. 1/d infra

(K 21)

(L)

notice that the Official Receiver, Civil and Military Station, Bangalore, was appointed guardian of the properties of the above minors and of Saleh Mahomed Sait who was also then a minor, by an order of his court, dated 5th March 1923 and that the Official Receiver has since resigned his guardianship and he was discharged from his office of guardian by an order of court made on 11/8/1930 and that no other person has been appointed by his court since then.

5. In the above circumstances, I request that the orders of the Government of India may be obtained determining in which of the courts the proceedings with respect to the appointment of the guardian of the property of the said minors shall be had.

6. Copies of the petition and letter are herewith sent for information.

In the Court of the District Judge of North Malabar.

Original Petition No.41 of 1931.

Rukyabai, widow of Ismail Sait, now residing in Tellicherry Bazaar, Tellicherry Amsam, Kottayam Taluk.	Petitioner.
Ex. guardian C.N. Suryaprakas, Official Receiver, Civil and Military Station, Bangalore...	Counter-petitioner.

Petition under Section 10 of the Guardian and Wards Act (Act VIII of 1890)

1. Ali Mahamed is petitioner's son now aged 16 years and Mahmooda is petitioner's daughter now aged 14 years. They are both residing with petitioner in Tellicherry Bazaar, in Tellicherry amsom of Kottayam Taluk. They are Muslims by religion but belong to the community of Cutchee Memon, who are governed by the H.L. of succession in the matter of their succession and inheritance.

2. Daughter Mahmooda is un-married.

3. The above Ali Mahamed is entitled to certain properties inherited from his father Ismail Sait, the particulars of which are as follows:-

(a) The minor is entitled to Rs. 15000 invested in Mysore Government Bonds.

(b) He is entitled to a fixed deposit of Rs. 10402/3/- in the Mysore Bank.

(c) There will be nearly Rs. 10000 in the current account in the same bank.

(d) There is a mortgage decree in O.S.23 of 1928 on the file of the Court of the District Judge, C & M Station, Bangalore. The minor is entitled to one half right in this decree.

(e)

(e) A small claim for rent which is the subject matter of a suit in Bangalore City to one half of which the minor is entitled.

(f) A balance due on account of rent from Raji Gowda of which this minor is entitled to onehalf.

(g) And also Rs. 4000 out of the remaining half for his marriage expenses.

(h) A decree has been passed against the estate in Mysore Court and the liabilities under that decree has to be met by both sons in equal shares.

(i) Petitioner holds a charge on Salay Mahamed Sait's share in the mortgage decree to the extent of Rs. 2500 and interest at 12%.

4. The said properties are at present in the possession of the ex-guardian.

5. The above minor is in the petitioner's custody. The petitioner is his mother and the petitioner was appointed guardian of the person of this minor by the Court of the District Judge, Civil and Military Station, Bangalore by order dated 5th day of March 1923.

6. The minor has the following near relations.-

i. Saliah Mohamed Ismail Sait, Central Street, Bangalore Cantonment. He is the step brother of the minor.

ii. Suleman Ibrahim Sait C/O Thar Mohamed Moosa Sait, Tellicherry. He is the son of the minor's father's elder brother.

iii. Elyas Ibrahim Sait, Idgah Road, Mysore, stands in the same relationship as No.2.

iv. Jan Mahomed Ibrahim Sait, Idgah Road, Mysore,

the same relationship as No.2.

v. Ahmed Fakir Mohamed, Dodapet, Mysore. He is the son of the minor's father's younger brother.

vi. Abu Baker Fakir Mohamed, Dodpet, Mysore. He stands in the same relationship as No. v.

vii. Kasem Fakir Mohamed Sait, Dodpet, Mysore. -do-

7. The petitioner applied to the Court of the District Judge, Civil and Military Station, Bangalore, to appoint the petitioner as the guardian of the person and property of the above minors and also of Bachu alias Saliah Mahomed and Iyboo who are children born to my husband by his first wife. That application was opposed and petitioner was appointed guardian of the person of her minor children. So far as the common properties of both sets of minors, the Official Receiver, C.&M Station, Bangalore, was appointed guardian by the order of that Court dated the 5th day of March 1923. When the said Official Receiver was acting as guardian of the properties of both the sets of minors, Bachu alias Saliah Mohamed mentioned above attained majority and himself and the Official Receiver came to an arrangement among them partitioning the properties into 2 portions. One portion being set aprat to Bachu alias Saliah Mohamed out of which he was to meet the maintenance and the marriage expenses of his siter Iyboo and also to pay Rs. 2500 to this petitioner and the other portion being set apart to petitioner's son Ali Mohamed out of which he was to meet the maintenance and the marriage expenses of his sister Mahmooda and also to pay Rs. 2500 to this petitioner. This arrangement was filed in the Bangalore Court, which approved of the same and sanctioned it by its order dated 9.7.1929. After this order the Official

Receiver's guardianship of the property of Saliah Mohamad and Kyboo ceased and from that date onwards, he had the guardianship of the properties of Ali Mohamed only. The official Receiver had been allowed a remuneration of Rs. 50/- a month by the Bangalore Court at the time of his appointment. Since one half of his entrustment was partitioned and given to Bachu alias Saliah Mohamad the share of Ali Mohamad alone could not bear this monthly liability of Rs. 50/-. On account of this fact and since the guardian was not giving any maintenance to this petitioner and to these minors from 9-7-1929 this petitioner applied to that Court on 2-7-1930 that the guardian may be directed to file his accounts. On the petitioner's putting in this petition the guardian submitted accounts into that Court and he also put in a petition resigning his office and requesting the Court that he may be discharged. The Court allowed this petition on 11-8-1930. So there is no guardian appointed by any Court from that date for the property of Ali Mohamad.

8. The maintenance of the said minors is held up from July 1929 till now. An application was filed for Rs. 2000 towards maintenance on 19-1-1931. Rs. 1000was ordered to be paid by the Ex-guardian who paid it on 13-7-1931 on the security bond of my brother Tar Mohamad Moossa Sait. About Rs. 3000 towards the maintenance is not yet paid and stand in arrears. This amount I owe to my brother Tar Mohamad Moossa Sait.

9. Much difficulty is felt on account of the absence of a guardian for the property of this minor, in drawing the interest and other monies due to the minors, and without drawing such money the minors' maintenance and education cannot be managed. So the petitioner, who is the mother and the guardian appointed by the Bangalore Court for the person

of this minor, feels embarassed in bringing up these minors. Hence this petition to have the petitioner appointed as the guardian of the properties of this minor.

The petitioner therefore prays for an order that the petitioner may be appointed guardian of the properties of her minor son Ali Mahamed and that the necessary order do issue under section 7 of the Guardian & Wards Act 1890.

Sd. Illegible. Sd.- Illegible

7-9-31.

I, Rukyabai, the petitioner named in the above petition do solemnly affirm that the statement contained in paras 1 to 10 of the above petition are true to my knowledge.

Signed this 18th day of September 1931.

I, Rukyabai the guardian proposed in the above petition do hereby declare that I am willing to act as guardian.

Sd. -

Signature of Guardian.

Signed in the presence of --

Witnesses.-

1. Sd. Sulaiman Saib
2. Sd Tar Mahomed Moosa.

(True Copy)

Sd. Illegible.

Subordinate Judge.

Copy of a letter No.6, dated the 2nd/4th January 1932, from the District and Sessions Judge, C. & M. Station, Bangalore, to the Subordinate Judge, North Malabar, Tellicherry.

Subject:- O.P.No. 82 of 1931 on the file of this Court.

--

I have the honour to state that one Saleh Mahomed Ismail Sait residing at No.1, Central Street, Bangalore has filed a petiton under Section 42 of the Guardian and Wards Act in this Court (O.P. 82/1931) praying that he may be appointed the guardian of the properties of the minors (1) Ali Mahomed and (2) Mahmooda. I understand that one Rokia Bai, mother of the minors mentioned above has filed an application O.P. No. 10/1931 on the file of your court praying that she may be appointed guardian of the properties of the minors. I have stayed further proceedings in this court temporarily and request that necessary action may be taken by you under section 14 of the Guardian & Wards Act. I may also bring to your notice that the Official Receiver, C. & M. Station, Bangalore was appointed guardian on the properties of the above minors and of Saleh Mahomed Sait who was then a minor by an order of this court dated 5-3-1923 in Mis. D/No.49 of 1922 and that the Official Receiver resigned his guardianship and was discharged from his office of guardian by this court on 11-8-1930. No other person was appointed by this court to act as guardian of the properties of minors after 11-8-1930.

[E.O. 106 (a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE,

Bangalore, 28th May 1932

No. 3604 Enclos. 3

@(in original to be kindly returned with reply)

A copy of the marginally* noted letter, with enclosures, is forwarded to the District & Sessions Judge, Civil and Military Station, Bangalore, with the request that he will kindly favour the Hon'ble the Resident with his views in the matter...

*No. F.189/32-Judicial, dated the 27th February, 1932, from the Government of India, in the Home Department.

For Secretary to the Resident.

23—10-4-1931—5,000—RPB

No 2651/ Enclos. 4

Civil and Military Station,

Bangalore, dated 13th June 1932.

From

C. V. Reddi Esq., B.A., B.L.,
DISTRICT AND SESSIONS JUDGE,
CIVIL AND MILITARY STATION,
BANGALORE.

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
14 JUNE 1932
Regd. No. 5357
File. No. 101 of 1932

To

The Secretary to the Hon'ble
the Resident in Mysore,
BANGALORE.

Sir,

SUBJECT:- O.P.No. 82 OF 1931 ON THE FILE OF THIS COURT.

With reference to your letter No. 3604/101 of 1932 dated 28-5-1932, I have the honour to state as follows:-

The minors Ali Mahomed and Mahmooda are residing with their mother Rukia Bai (Rokhya Bai) within the jurisdiction of the Subordinate Judge of Tellicherry (North Malabar) but the properties of the minors are situated within the jurisdiction of this Court. Under Section 9 (2) of the Guardians and Wards Act (VIII of 1890) an application for the appointment of a guardian for the properties of the minors may be made in Tellicherry or here and under Section 9 (3) of the said Act such an application made here may be returned if this Court is of opinion that the application would be disposed of more justly or conveniently by the Sub-Court at Tellicherry. But a guardian was appointed in Miscellaneous No. D/49 of 1922 on the file of this Court on an application presented by Rokhya Bai. The latter's prayer to be appointed guardian herself was not granted and Rao Saheb (then Mr.) C. N. Surya Prakas, B. A., B.L., Official Receiver and an Advocate of this Court, was appointed guardian on 5-3-1923. This guardian subsequently resigned

P.T.O.

and was discharged from the office by this Court on 11-8-1930 and no other person has been appointed as guardian by this Court since then. In the circumstances, I am of opinion that Section 42 of the Act applies. "The Court" referred to therein is defined in Section 4 (5) (a) (i) as the Court which originally appointed the guardian. This Court would therefore appear to have exclusive jurisdiction to entertain an application for the appointment of a fresh guardian although - Rokhya Bi has applied now first to the Subordinate Judge of Tellicherry in the matter.

The enclosures to your letter are returned - herewith.

I have the honour to be,

Sir,

Your most obedient servant,

PSR.

District & Sessions Judge.

From

The Resident in Mysore.

To

The ~~Secretary~~ ~~Political~~ Secretary to the Government of India, ~~in the Foreign & Political~~ Home Department.

Question of the jurisdiction of the court which should try the claim about guardianship in the case of minors, Ali Mahamed and Mahmooda.

Sir,

I have the honour to refer to Mr. Gwynne's letter No.F.189/32-Judicial, dated the 27th February 1932, on the above subject and to state that the District Judge, Civil and Military Station, Bangalore, whom I consulted, states as follows:-

"The minors Ali ~~Mahamed~~ Muhammad and Mahmooda are residing with their mother Rukia Bai (Rokhya Bai) within the jurisdiction of the Subordinate Judge of Tellicherry (North Malabar) but the properties of the minors are situated within the jurisdiction of this Court (the Court of the

District

District Judge, Civil and Military Station, Bangalore). Under section 9(2) of the Guardians and Wards Act (VIII of 1890) an application for the appointment of a guardian for the properties of the minors may be made in Tellicherry or here; and under section 9(3) of the said Act such an application made here may be returned if this Court is of opinion that the application would be disposed of more justly or conveniently by the Sub-Court at Tellicherry. But a guardian was appointed in Miscellaneous No.d/49 of 1922 on the file of this Court on an application presented by Rokhya Bai. The latter's prayer to be appointed guardian herself was not granted and Rao Saheb (then Mr.) C. N. Surya Prakas, B.A., B.L., Official Receiver and an Advocate of this Court was appointed guardian

S.N. 3

P.U.C

on the 5th March 1923. This guardian subsequently resigned and was discharged from the office by the Court on the 11th August 1930 and no other person has been appointed guardian by the Court since then. In the circumstances, I am of opinion that section 42 of the Act applies. "The Court" referred to therein is defined in section 4(5)(b)(i) as the Court which originally appointed the guardian. This Court would therefore appear to have exclusive jurisdiction to entertain an application for the appointment of a fresh guardian although Rokhya Bai has applied now first to the Subordinate Judge of Tellicherry in the matter. I agree with the views of the District Judge.

I have etc.,

RESIDENT.

No. 101-1932.

From

The Hon'ble Lieutenant Colonel R.J.C.Burke,
Resident in Mysore.

To

The Secretary to the Government of India,
Home Department.

Dated Bangalore July, 1932.

Question of the jurisdiction of the court which should try the claim about guardianship in the case of minors, Ali Muhammad and Mahmooda.

Sir,

I have the honour to refer to Mr. Gwynne's letter No.F.189/32-Judicial, dated the 27th February, 1932, on the above subject and to state that the District Judge, Civil and Military Station, Bangalore, whom I consulted, states as follows:-

"The minors Ali Muhammad and Mahmooda are residing with "their mother Rukia Bai (Rokhya Bai) within the jurisdiction "of the Subordinate Judge of Tellicherry (North Malabar) but "the properties of the minors are situated within the "jurisdiction of this Court (the Court of the District Judge, "Civil and Military Station, Bangalore). Under section "9(2) of the Guardians and Wards Act (VIII of 1890) an "application for the appointment of a guardian for the pro- "perties of the minors may be made in Tellicherry or here; "and under section 9(3) of the said Act such an application "made here may be returned if this Court is of opinion that "the application would be disposed of more justly or con- "veniently by the Sub-Court at Tellicherry. But a "guardian was appointed in Miscellaneous No. D/49 of 1922 "on the file of this Court on an application presented by "Rokhya Bai. The latter's prayer to be appointed "guardian herself was not granted and Rao Saheb (then Mr.)

"C. N. Surya Prakas, B.A., B.L., Official Receiver and an "Advocate of this Court was appointed guardian on the 5th "March 1923. This guardian subsequently resigned and was "discharged from the office by the Court on the 11th August "1930 and no other person has been appointed guardian by the "Court since then. In the circumstances, I am of opinion "that section 42 of the Act applies. "The Court" referred to "therein is defined in section 4(5)(b)(i) as the Court which "originally appointed the guardian. This Court would there- "fore appear to have exclusive jurisdiction to entertain an "application for the appointment of a fresh guardian although "Rokhya Bai has applied now first to the Subordinate Judge of "Tellicherry in the matter".

I agree with the views of the District Judge.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- R. C. Burke.

Lieut. Col.

RESIDENT.

No.F.189/32-Judicial.

Government of India,

Home Department.

From

C.W. Gwynne, Esquire, C.I.E., O.B.E., I.C.S.,

Joint Secretary to the Government of India,

To

The Secretary to the Government of Madras,

Law(General) Department.

New Delhi, the 7th December 1932.

Subject:- Question of the jurisdiction of the court which should try the claim about guardianship in the case of minors Ali Mahamed and Mahmooda.

Sir,

I am directed to refer to the correspondence ending with your letter No.531 B-6, dated the 2nd November 1932 on the above subject, and in reply to say that the Governor General in Council has no jurisdiction to entertain the reference purporting to have been made to him under sub-section(3) of section 14 of the Guardians and Wards Act, 1890 (VIII of 1890). Section 14 of the Act as in force in British India applies only as between courts in British India and the section as applied to the Civil and Military Station of Bangalore applies only as between courts in that station. Nor do the Act as in force in British India and the Act as applied operate in conjunction to produce a single law running over the area comprising British India plus the Civil and Military Station.

2. Equally the references in sub-section(2) of section 9 to "the place where the minor ordinarily resides" and to " a place where he has property" embrace only places within the area to which the Act concerned applies, i.e., for the purposes of sub-section (2) of section 9 of the Act as in force in British India the place must be in British India, while for the purposes of that sub-section of the Act as applied to the Civil and Military Station the place must be in that station. Consequently the application with respect to guardianship of the person lies only in Tellichery where the minors ordinarily reside, while the application with respect to the guardianship of the property lies only in the Civil and Military Station where the property is said to be situate.

3. In the circumstances I am to suggest for the consideration of the Governor in Council that the Tellicherry court should proceed with the application qua application with respect to the guardianship of the person and refer the applicant Rukia Bai, to the Bangalore court in so far as her application is with respect to the guardianship of the property situate in the Civil and Military Station, and the Bangalore court should adopt the converse course.

4. A copy of this letter is being forwarded to the Honourable the Resident in Mysore.

I have the honour to be,

Sir,

Your most obedient servant,

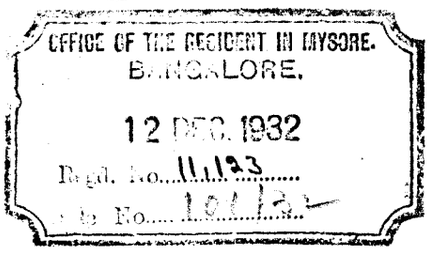
Sd. C.W. Gwynne.

Joint Secretary to the Government of India.

No.F.189/32-Judicial.

Copy forwarded to the Honourable the Resident in Mysore, for information and guidance, with reference to the correspondence ending with his letter No. 4607/101-1932, dated the 12th July 1932.

S.N.H (B)



By Order,

Joint Secretary to the Government of India.

[R.O. 106 (a).]

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

OFFICE OF THE RESIDENT IN MYSORE, 16

Bangalore 21st Dec. 1932.

No. 8639 Enclos. 1
101/1932

S.N. 6
p. c.

A copy of the marginally* noted letter, ~~with enclosure,~~ is forwarded to the District & Sessions Judge, Civil and Military Station, Bangalore, for information and guidance with reference to his letter No.2651, dated the 13th June, 1932.

*No. F. 189/32, Judicial,
dated the 7th Decr., 1932,
from the Government of India, Home Department.

× S.N. 3 (A)

15/XII

Secretary to the Resident.

Rcd. 19/12.
Tpd. 20-12-

22-10-4-1931—5,000—B.P.B.